IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3933 of 2004

For Approval and Signature:
HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AVALBEN JETHABHAI PARMAR

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:
MR TEJAS M BAROT for Petitioner No. 1
MR JAYESH BAROT for MR HS MUNSHAW for Respondent No. 1
MR KUNJAL D PANDYA, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/08/2004

ORAL JUDGEMENT

RULE. Mr.Jayesh Barot, learned advocate, appears and waives service of rule on behalf of respondent No.1 and Mr.Kunjal D. Pandya, learned AGP, appears and waives service of rule on behalf of respondent No.2. With the consent of the parties, the matter is taken for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the District Development Officer, Banaskantha dated 24-03-2004 (at Annexure-K to the petition) in not allowing the

petitioner to discharge her duties as President of Banaskantha District Panchayat.

3. The petitioner was elected as President of Banaskantha District Panchayat at the meeting, which had been convened on 25-08-2003. It seems that the State Government passed an order on 11-11-2003 whereby the petitioner's election as the President came to be quashed and set aside. Being aggrieved and dissatisfied with the said order, the petitioner preferred Special Civil Application No.15940 of 2003 before this Court, which came to be heard by this Court (Coram : A.R.Dave, J) and considering the fact that before passing the impugned order dated 11-11-2003 and before cancelling the petitioner's election as President of Banaskantha District Panchayat, the petitioner was not heard and, therefore, this Court by judgment and order dated 19-03-2004 allowed the aforesaid SCA No.15940 of 2003 by quashing and setting aside the order dated 11-11-2003 passed by the State of Gujarat and remanded the matter to the respondent No.2 so as to enable him to decide the application afresh, after hearing the petitioner and other concerned parties.

4. It seems that on remand, the proceedings are pending before the respondent No.2, no final order/decision is taken.

5. After the judgment and order dated 19-03-2004 rendered by this Court in the aforesaid SCA No.15940 of 2003 whereby quashing and setting aside the order dated 11-11-2003 passed by the State Government whereby the petitioner's election as President of Banaskantha District Panchayat came to be set aside, the petitioner approached the District Development Officer for taking charge as President of Banaskantha District Panchayat. However, by order dated 24-03-2004 the District Development Officer refused to allow the petitioner to take charge as President of Banaskantha District Panchayat on the ground that the matter is now remanded to the State Government and the dispute is pending before it and till the Secretary takes a decision, no charge can be handed over to the petitioner. The aforesaid communication/ order dated 24-03-2004 is the subject matter of the present petition.

6. While issuing the notice in the present petition this Court granted ad-interim relief in terms of para 29(B). Meaning thereby the execution, operation and implementation of the order dated 24-03-2004 was stayed on a condition that no policy decision shall be taken by the petitioner. The ad-interim relief granted earlier

has been continued till date and the petitioner continues to be the President of Banaskantha District Panchayat.

7. Today, when the matter is called out, it is not in dispute that the proceedings are pending before respondent No.2 herein and no decision is taken by the State Government with regard to election of the petitioner as President of Banaskantha District Panchayat. On quashing and setting aside the earlier order dated 11-11-2003 as on today the petitioner continues to be President of Banaskantha District Panchayat. Her election as President of Banaskantha District Panchayat is not set aside till date and in view of the fact that the proceedings are pending before respondent No.2, this Court proposes to dispose of the present petition by directing the respondent No.2 to decide and dispose of the proceedings pending before him with regard to the validity of the election of the petitioner as President of Banaskantha District Panchayat within a period of 02 (two) months from the date of receipt of copy of this order by quashing and setting aside the order passed by the District Development Officer dated 24-03-2004 and after giving an opportunity to the petitioner and all the concerned parties as ordered by this Court in SCA No.15949 of 2003 dated 19-03-2004. Ad-interim relief granted earlier by this Court is directed to be continued till the decision is taken by respondent No.2 and the same shall be in force for a further period of 02 (two) weeks thereafter.

8. It goes without saying that it will be open to the petitioner and all concerned parties to take all the contentions which are available under the law and which are raised in the present petition also including the question of jurisdiction.

9. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service permitted.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'